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*Before Pritam Pal, J.*

KIRAN FINANCE COMPANY,—Appellant

*versus*

SUKHDEV KISHAN,—Respondent

*Crl. Appeal No. 181/SBA of 2003*

3rd October, 2005

*Limitation Act, 1963—S.19—Negotiable Instruments Act, 1881—S.138—Hire purchase agreement—Dishonour of cheque after the date when the debt taken by respondent becomes time barred—Trial Court holding the complaint time barred—Appellant failing to produce record pertaining to the payment of instalments and sale of vehicle for computing the period prescribed for limitation for filing the complaint—Appellant also failing to prove that he was also a partner of the said company—Appeal dismissed being devoid of merit.*

*Held*, that a perusal of the evidence brought on the file by the appellant goes a long way to show that there is not an iota of any positive evidence, which could give any date and time of the last payment, made by the respondent in favour of the appellant. According to the case of the respondent, he had paid the entire amount of debt, whereas, the case of the appellant is that only partial payment was made by the respondent. Admittedly, the entire record pertaining to the payment of instalments and sale of the vehicle which was returned to it in September, 1999 was with the appellant, but the same has been withheld for the reasons best known to the complainant-appellant-Company. Moreover, the auction of the said vehicle is stated to have taken place on 18th October, 2000 but that cannot be taken to be the date of last payment on behalf of the respondent, inasmuch as, at that time, the vehicle was in the possession of the appellant. Moreover, on the said date, i.e. 18th October, 2000, the liability of discharging the debt had become time barred. The appellant has miserably failed to give any specific date, either in his complaint or in his examination-in-chief in respect of the last payment of instalment or interest so as to bring the claim of the appellant within time.

(Para 10)

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*Further held*, that in a criminal case, prosecution has to stand upon its own legs and it cannot take the advantage of weak defence before holding the accused guilty. Thus, it was the bounden duty of the complainant to establish its case by giving specific date and time regarding the payment of instalment of debt liability by the respondent in order to show that the claim of the complainant was not time barred when the cheque dated 24th September, 1999 was issued in the name of the appellant-company, of which Capt. Lakhwinder Singh Gill was the Managing Partner. He has failed to produce any cogent and convincing evidence in that behalf. Further, it is evident on the file that the respondent also took an objection when Capt. Lakhwinder Singh Gill had stated in his examination-in-chief that he was the Managing partner of Kiran Finance Company. Even then, the appellant failed to prove that he was also a partner of the said company, which is stated to have been registered. A photocopy of Form, 'C' has been placed on the file but that too has not been attested by any competent authority and the same does not show Capt. Lakhwinder Singh Gill to be its Managing Partner. In such circumstances, the criminal complaint or the appeal filed on behalf of a company by the appellant who is not proved to be a partner of the registered Company/firm is held to be not maintainable.

(Para 11)

K. S. Cheema, Advocate, *for the appellant*

Arvind Kashyap, Advocate, *for the respondent.*

### JUDGMENT

**PRITAM PAL, J.**

(1) This appeal has been preferred by Kiran Finance Company, Hoshiarpur through its Managing Partner, Capt. Lakhwinder Singh Gill against order dated 26th February, 2002 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, whereby respondent-Sukhdev Kishan was acquitted in a complaint case No. 9 of 18th November, 1999 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "*the Act*").

(2) The case of the complainant shorn of details, is like thus :

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(3) Respondent-Sukhdev Kishan had purchased a Matador bearing registration No. HP-20-1444,—*vide* Hire Purchase Agreement (Ex. DX) dated 20th May, 1996 for an amount of Rs. 3,20,000/-. The said amount was to be paid in 36 installments. In the event of failure, 4% over due charges were also agreed to be paid on the defaulted amount. To discharge his partial liability, respondent Sukhdev Kishan had issued a cheque No. 570893, dated 24th September, 1999 worth Rs. 85,000 to the complaint-appellant, but, the same was dis-honored on account of insufficient funds. A legal notice dated 11th October, 1999 (Ex. C6) was issued to the respondent to make payment but, of no avail. Ultimately, on these aforesaid allegations, complainant-appellant had filed a complaint under Section 138 of the Act. After recording the preliminary evidence, the respondent was summoned to face trial for commission of offence under Section 138 of the Act.

(4) In order to prove its case, the appellant examined as many as three witnesses, namely, CW-1 Lakhwinder Singh Gill, complainant, CW-2 Gurinderpal Singh, Special Assistant of the Oriental Bank of Commerce, Hoshiarpur and CW-3 Naresh Pal, Clerk- cum-Cashier, State Bank of Patiala, Una.

(5) After closure of the evidence by the appellant, the respondent was examined in terms of Section 313 of the Code of Criminal Procedure wherein, he denied the incriminating evidence appearing against him. In answer to the last but one question, the respondent submitted that the cheque-in-dispute, bearing his signatures only, was handed over to the appellant as a security and it was never issued by him in order to discharge the liability.

(6) Learned trial Magistrate after appraisal of the evidence and hearing learned counsel for the parties, came to the conclusion that the cheque (Ex. C2) dated 24th September, 1999 worth Rs. 8,500 was issued by the respondent in favour of the appellant but the same was issued when the debt taken by the respondent had already become time-barred. On this observation, no liability could be fastened upon the respondent under Section 138 of the Act and as such, he was acquitted in the Complaint case. This is how feeling aggrieved, the appellant has come up in this appeal.

(7) I have heard learned counsel for the parties and have also gone through the file carefully.

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(8) The only contention raised on behalf of the appellant is that under Section 19 of the Limitation Act, 1963, a fresh period of limitation shall be computed from the time, when the last payment was made by the respondent to discharge his liability. He then made a reference to the cross-examination of the CW-1 Capt. Lakhwinder Singh Gill wherein he stated that the aforesaid Matador purchased by the respondent was returned to him (appellant) in September, 1999 and ultimately, the said vehicle was disposed of in an open auction on 18th October, 2000 for a sum of Rs. 30,000. After making reference to the above answers given by the appellant in his cross-examination, learned counsel for the appellant also relied upon the decision in **S. Krishnamurthy versus A.R. Rajan (1)** and then contended that in the given circumstances, the trial court should have drawn an inference that the last payment was made on 18th October, 2000 towards the debt liability and as such the cheque dated 24th September, 1999 was issued well within the time and the complaint case was thus, also not time-barred though it is held to be time-barred by the trial Court.

(9) On the other hand, learned counsel for the respondent repelled the aforesaid point of argument raised on behalf of the appellant and contended that in a criminal case, the complainant has to prove his case beyond reasonable doubt for holding the accused guilty under any particular offence. Here, in the instant case, the appellant had all the records pertaining to details of payment and acknowledgment thereof in his custody, but the same was not produced for the reasons best known to it. In fact, had that record been brought on the file, the same would have gone against the appellant. In order to prove the payment of last installment, some receipt or acknowledgment or some writing in proof thereof, on behalf of the respondent should have been produced for the purpose of computing the period prescribed for limitation for filing the complaint case, but there is no such document on the file. At the last leg of his argument, learned counsel for the respondent also relied upon the Supreme Court judgment in **Sant Lal Mohan versus Kamla Prasad and others (2)**. In the alternative, he

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(1) 1996 CrI. Law Journal 3552

(2) AIR 1951 S.C. 477

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also relied upon the decision in **Amit Desai versus M/s. Shine Enterprises (3)** and then contended that here, in the instant case, partnership of Capt. Lakhwinder Singh Gill, complainant, as a Managing Partner in the appellant-Company is not proved and in such circumstances, criminal complaint filed by a person, who is not proved to be a partner in the registered firm or Company, is not maintainable.

(10) I have given my thoughtful consideration to the above rival contentions of the learned counsel for the parties and find no merit in the point raised on behalf of the appellant, inasmuch as, a perusal of the evidence brought on the file by the appellant goes a long way to show that there is not an *iota* of any positive evidence, which could give any date and time of the last payment, made by the respondent in favour of the appellant. According to the case of the respondent, he had paid the entire amount of debt, whereas, the case of the appellant is that only partial payment was made by the respondent. Admittedly, the entire record pertaining to the payment of installments and sale of the vehicle, which was returned to it in September, 1999, was with the appellant, but the same has been withheld for the reasons best known to the complainant-appellant-Company. Moreover, the auction of the said vehicle is stated to have taken place on 18th October, 2000, but that cannot be taken to be the date of last payment on behalf of the respondent, inasmuch as, at that time, the vehicle was in the possession of the appellant. Moreover, on the said date, i.e., 18th October, 2000, the liability of discharging the debt had become time-barred. In this regard, it is pertinent to mention here that as per the Hire Purchase Agreement (Ex. DX), the entire debt amount to the tune of Rs. 3,20,000 was made payable in 36 monthly installments, with effect from 20th May, 1996 and as such, the same had to be paid within three years i.e., on or before 20th May, 1999. As stated above, the cheque dated 24th September, 1999 was issued by the respondent when the debt liability had become time-barred. In **S.Krishnamurthy's** case (*supra*), relied upon by learned counsel for the appellant, it was proved that accused had paid the interest on various dates in respect of alleged time-barred pronotes and thereby the disputed pronotes

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had not become time-barred. But, here in the instant case, as discussed above, the appellant has miserably failed to give any specific date, either in his complaint or in his examination-in-chief in respect of the last payment of installment or interest so as to bring the claim of the appellant within time. On the other hand, under Section 19 of the Limitation Act, 1963 which corresponds to the earlier Section 20 of the Limitation Act, 1908, the payment has got to be proved in a particular way i.e., on the basis of some writing or signed acknowledgment. In this regard, it has been observed by their Lordships of the Apex Court in Sant Lal Mahton's case (*supra*) as under :—

“It is the payment which really extends the period of limitation under Section 20 but the payment has got to be proved in a particular way and for reasons of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. However, while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within the period. But while it is not necessary that the written acknowledgment should be made prior to the expiry of the period of limitation, it is essential that acknowledgment whether made before or after the period of limitation must be in existence prior to the institution of the suit. Whether a suit is time barred or not has got to be determined exclusively with reference to the date on which the plaint is filed and the allegations made therein. To claim exemption under Section 20, the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section. The ground of exemption is not complete without this second element, and unless both these elements are proved to exist at the date of the plaint the suit would be held to be time barred. Where none of the payments were endorsed

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on the bond itself and there was no acknowledgment either in the handwriting of or signed by the debtors prior to the institution of the suit, but in the written statement filed in the suit the defendants admitted the payments specified in the plaint as made on the respective dates and the written statement was signed by defendants it would not fulfil the requirements of a signed acknowledgment as is contemplated by the proviso to Section 20..."

(11) It is settled law that in a criminal case, prosecution has to stand upon its own legs and it cannot take the advantage of weak defence before holding the accused guilty. Thus, it was the bounden duty of the complainant to establishment its case by giving specific date and time regarding the payment of installment of debt liability by the respondent in order to show that the claim of the complainant was not time-barred when the cheque (Ex.C2) dated 24th September, 1999 was issued in the name of appellant-company, of which Capt. Lakhwinder Singh Gill was the Managing Partner. But, as discussed above, he has failed to produce any cogent and convincing evidence in that behalf. Further, it is evident on the file that the respondent also took an objection when Capt. Lakhwinder Singh Gill had stated in his examination-in-chief that he was the Managing Partner of Kiran Finance Company. Even then, the appellant failed to prove that he was also a partner of the said company, which is stated to have been registered. A photocopy of Form 'C' has been placed on the file as Ex. C1, but that too has not been attested by any competent authority and the same does not show Capt. Lakhwinder Singh Gill to be its Managing Partner. In such circumstances, the criminal complaint or the appeal filed on behalf of a company, by the appellant, who is not proved to be a partner of the registered Company/firm, is held to be not maintainable.

(12) In view of my foregoing discussion, I have no hesitation to hold that the appeal filed by Capt. Lakhwinder Singh Gill, complainant-appellant is devoid of any merit and as such, the same is hereby dismissed.